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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,830	03/12/2004	Steven K. Dentel	00131-00317-US1	5021

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CONNOLLY BOVE LODGE & HUTZ LLP
SUITE 800
1990 M STREET NW
WASHINGTON, DC 20036-3425

EXAMINER

HRUSKOCI, PETER A

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/798,830	DENTEL, STEVEN K.	
	Examiner	Art Unit	
	Peter A. Hruskoci	1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006 and 07 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. In claim 7 "solution" lacks clear antecedent basis in the specification as originally filed, and appears to be drawn to new matter.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone 5,948,269 or Benjamin et al. 5,911,882. Stone (See col. 4 line 12 through col. 5 line 12) and Benjamin et al. (See col. 8 line 27 through col. 9 line 18) disclose a composition or solution comprising ferric nitrate or ions, and an alkaline material substantially as claimed. The claims differ from Stone or Benjamin et al. by reciting that the composition comprises specific weight percents of ferric nitrate or ions, and alkaline material. It is submitted that the specific weight percents utilized to form the aqueous solution disclosed in Stone or Benjamin et al. are considered patentably indistinguishable from the weight percents recited in the instant claims. It would have been obvious to one skilled in the art to modify the composition of Stone or Benjamin et al. by utilizing the specific weight percents, to aid in neutralizing a portion of the iron in the composition. The specific weight percents utilized to form the composition, would have been an obvious matter of process optimization to one skilled in the art, depending on the

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specific use of the composition and results desired, absent a sufficient showing of unexpected results.

Applicant argues that the references Stone and Benjamin et al. taken as a whole or severally fail to teach a solution comprising ferric nitrate. It is submitted that claim 1 is not limited to this solution, and includes a solution of at least 40% by weight of a source of ferric ions, and up to about 60 % by weight of an alkaline or buffering material. It is submitted that the teachings of Stone and Benjamin et al. as applied above appear to teach or suggest the solution recited in the instant claims.

Applicant alleges that the instant application shows the use of nitrate is advantageous over other ions, specifically provides an example of better performance than ferric chloride, one of the combinations claimed in Stone. It is noted that Benjamin et al. as applied above discloses a ferric nitrate solution patentably indistinguishable from the solution recited in the instant claims. It is further noted that the instant claims include a solution from a source of ferric ions, which is patentably indistinguishable from the solution disclosed in Stone as applied above. The example has been carefully considered but fails to overcome the above rejection. The specific test conditions utilized to produce the results shown in the Example are not commensurate with the scope of the instant claims. Furthermore, applicant has not presented sufficient comparative evidence with the prior art used in the above rejection to support the above allegation.

Applicant's citation of case law has been carefully considered but is not deemed pertinent due to the different circumstances involved in the instant application.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter A. Hruskoci whose telephone number is (571) 272-1160. The examiner can normally be reached on Monday through Friday from 6:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4/11/06


Peter A. Hruskoci
Primary Examiner
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